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DOLLAR TREE STORES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTEN HONDA,

Plaintiff,

v.

DOLLAR TREE STORES, INC., and
DOES 1 TO 25,

Defendants.

Case No.

[*Marin County Superior Court Case No.:
CIV2104162*]

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §1332 & §1441(B)
(DIVERSITY)**

Complaint Filed: December 14, 2021

First Amended Complaint Filed: March 28, 2022

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §1332 and §1441(b), Defendant DOLLAR TREE STORES, INC., contemporaneously with the filing of this notice, is effecting the removal of the below referenced action from the Superior Court of the State of California for the County of Marin, to the United States District Court, Northern District of California. The removal is based, specifically, on the following grounds.

JURISDICTION AND VENUE ARE PROPER

1. This is a civil action over which this Court has original jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. § 1332(a), and is one which may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441(b) because it is a

1 civil action between citizens of different states and the amount in controversy exceeds
 2 \$75,000, exclusive of interest and costs, as set forth below. 28 U.S.C. §§ 1332,
 3 1441(a), and 1446(b).

4 2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(a), 1391 and
 5 1446.

6 **PLEADINGS, PROCESS AND ORDERS**

7 3. On December 14, 2021, Plaintiff KRISTEN HONDA (“Plaintiff”
 8 commenced the above-entitled civil action in the Superior Court for the County of
 9 Marin by filing a Complaint therein entitled *Kristen Honda v. Dollar Tree, Does 1 To*
 10 *25*; Case No. CIV2105162. True and correct copies of the Summons and Complaint
 11 filed by Plaintiff on December 14, 2021 are attached hereto as **Exhibit “A.”** Plaintiff
 12 did not properly serve the Summons and Complaint (**Exhibit “A”**) on Defendant
 13 DOLLAR TREE STORES, INC.

14 4. On March 28, 2022, Plaintiff KRISTEN HONDA filed a First Amended
 15 Complaint naming DOLLAR TREE STORES, INC. as defendant, and the caption of
 16 the case was changed to *Kristen Honda v. Dollar Tree Stores, Inc., and Does 1 To 25*.
 17 True and correct copies of the following documents which filed by Plaintiff on March
 18 28, 2022, are attached hereto and incorporated herein by reference collectively as
 19 **Exhibit “B:”**

- 20 a. Summons;
- 21 b. Complaint;
- 22 c. Notice of Case Management Conference;
- 23 d. Summons on First Amended Complaint; and
- 24 e. First Amended Complaint

25 5. On April 26, 2022, DOLLAR TREE STORES, INC. filed its Answer to
 26 First Amended Complaint and Demand for Jury Trial with the Marin County Superior
 27 Court. True and correct copies of DOLLAR TREE STORES, INC.’s Answer to First
 28 Amended Complaint and Demand for Jury Trial are collectively attached and

1 incorporated by reference as **Exhibit “C.”**

2 6. The following documents are also on file with the Marin County Superior
3 Court:

4 a. Notice of Case Management Conference (Civil) dated March 4,
5 2021, a true and correct copy of which is attached hereto as **Exhibit “D.”**

6 b. Proof of Service filed January 4, 2022, a true and correct copy of
7 which is attached hereto as **Exhibit “E.”**

8 c. Defendant’s Case Management Statement, filed April 26, 2022, a
9 true and correct copy of which is attached hereto as **Exhibit “F.”**

10 d. Notice of Ruling, filed May 4, 2022, a true and correct copy of
11 which is attached hereto as **Exhibit “G.”**

12 7. The attached exhibit constitutes all process, pleadings and orders served
13 upon or by Defendant DOLLAR TREE STORES, INC. in this matter.

14 **DIVERSITY**

15 **A. Citizenship**

16 8. This is a civil action over which this Court has original jurisdiction under
17 28 U.S.C. § 1332, in that it is a civil action wherein the matter in controversy exceeds
18 the sum of \$75,000, exclusive of interest and costs. This action is one that may be
19 removed to this Court by Defendant pursuant to 28 U.S.C. section 1441(b), as the
20 action is between citizens of different states.

21 9. Plaintiff was, at the time of the filing of this action, and presently remains,
22 a resident and citizen of the State of California.

23 10. Defendant DOLLAR TREE STORES, INC., is a corporation. For
24 diversity purposes, a corporation is deemed to be a citizen of every state by which it
25 has been incorporated and the state where it has its principal place of business. 28
26 U.S.C. § 1332(c)(1). Defendant is incorporated in the State of Virginia, with its
27 principal place of business in Virginia. Accordingly, Defendant is a citizen of the state
28 of Virginia.

11. Therefore, complete diversity of citizenship exists as between Plaintiff KRISTEN HONDA and Defendant DOLLAR TREE STORES, INC.

B. Fictitious Does

12. Defendants DOES 1 to 25, inclusive, are wholly fictitious. The Complaint does not set forth the identity or status of any said fictitious defendants. In determining whether a civil action is removable on the basis of jurisdiction under section 1332(a), the citizenship of defendants sued under fictitious names shall be disregarded. 28 U.S.C. §. 1441(b)(1); *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998). Accordingly, the mere fact that the Complaint makes reference to fictitious defendants does not destroy diversity jurisdiction and does not preclude this action from being properly removed to this Court.

AMOUNT IN CONTROVERSY

13. Plaintiff's Complaint sets forth a cause of action for negligence. See, Exhibit "A." Plaintiff alleges that on October 30, 2020, she was a patron at defendant's store and as she turned from an aisle towards the check-out area, she tripped and fell over baskets that were stacked upon each other by defendant's employee blocking the aisle and causing her to be injured.

14. Where a complaint does not allege a specific amount in damages, the removing defendant bears the burden of proving by a "preponderance of the evidence" facts that support an inference that the amount in controversy exceeds the statutory minimum. *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1996); *see, McPhail v. Deere and Company*, 529 F.3d 947, 955 (10th Cir. 2008) ("It is only the jurisdictional facts that must be proven by a preponderance – not the legal conclusion that the statutory threshold amount is in controversy."). This standard is not a "daunting" one, as courts recognize that unlike the "legal certainty test" applicable where the complaint does allege a specific amount in damages, the removing defendant is not obligated to "research, state, and prove the plaintiff's claim for damages." *McCraw v. Lyons*, 863 F. Supp. 430, 434 (W.D. Ky. 1994); *see also*,

1 *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1204-05 (E.D. Cal. 2008).

2 15. A defendant must merely set forth the underlying facts supporting an
3 inference that the amount in controversy exceeds the statutory minimum. A defendant
4 must establish jurisdiction by proving jurisdictional facts, i.e., proof of what the
5 plaintiff is seeking to recover. *McPhail*, 529 F.3d at 954-55. “Once the facts have
6 been established, uncertainty about whether the plaintiff can prove [h]is substantive
7 claim, and whether damages (if the plaintiff prevails on the merits) will exceed the
8 threshold, does not justify dismissal.” *Meridian Secs. Ins. Co. v. Sadowski*, 441 F.3d
9 540, 543 (7th Cir. 2006); *see also*, *McPhail*, 529 F.3d at 954 (once underlying
10 jurisdictional facts are proven, “a defendant (like a plaintiff) is entitled to stay in
11 federal court unless it is ‘legally certain’ that less than \$75,000 is at stake”).

12 16. On May 2, 2022 Plaintiff served Defendant by United States Mail with a
13 Statement of Damages under California *Code of Civil Procedure* § 452.11, which was
14 received by Defendant on May 5, 2022. The Statement of Damages establishes that
15 the amount in controversy in this litigation exceeds the \$75,000 statutory minimum.
16 A true and correct copy of Plaintiff’s Statement of Damages is attached hereto as
17 **Exhibit “H.”**

18 17. Plaintiff’s Statement of Damages alleges that she is seeking at least
19 \$200,000 in past and future medical expenses, among other damages claimed. *Ibid.*
20 Thus, the amount in controversy exceeds the \$75,000 statutory minimum and federal
21 jurisdiction is proper.

22 18. 28 USC § 1446(b)(3) provides that, where the case stated by the initial
23 pleading is not removable, a notice of removal can be filed within thirty (30) days after
24 receipt by the defendant, through service or otherwise, of an amended pleading,
25 motion, order “or other paper” from which it may first be ascertained that the case is
26 one which is or has become removable. A statement of damages under California Code
27 of Civil Procedure section 425.11, is a written statement setting forth the nature and
28 amount of damages being sought, and constitutes “other paper” under section

1 1446(b)(3). See *Hanson v. Equilon Enterprises LLC* (N.D.Cal. 2014) 2014 U.S. Dist.
 2 LEXIS 110795, *9 (finding statement of damages served on defendant by plaintiff
 3 constituted “other paper”).

4 19. The test for whether the amount in controversy is satisfied is whether
 5 there is a “reasonable probability” that the claim exceeds \$75,000. *Scherer v. The*
 6 *Equitable Life Assurance Society of the U.S.*, 347 F.3d 394, 397 (2d. Cir. 2003). The
 7 Ninth Circuit has adopted the “either-viewpoint rule,” meaning that the amount in
 8 controversy requirement is satisfied if (1) Plaintiff seeks to recover more than
 9 \$75,000.00 or (2) the recovery Plaintiff seeks will cost the defendant more than the
 10 jurisdictional threshold. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 405 (9th
 11 Cir. 1996).

12 20. Plaintiff’s Statement of Damages constitutes “other paper” and satisfies
 13 the amount in controversy requirement. Therefore, federal jurisdiction is proper.

14 **TIMELINESS OF REMOVAL**

15 21. This Notice of Removal is timely filed in that it has been filed within
 16 thirty (30) days after receipt by Defendant of Plaintiff’s Statement of Damages on May
 17 5, 2022, which first indicated that the amount in controversy exceeds \$75,000 and the
 18 matter is removable. 28 U.S.C. § 1446(b)(3).

19 22. Further, the instant removal is made within one year of the filing of the
 20 Complaint. As noted above, Plaintiff filed her Complaint on December 14, 2021.

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23. For the foregoing reasons, this Court has original jurisdiction under 28 U.S.C. §§ 1332 and 1441(b).

Dated: May 31, 2022

THARPE & HOWELL, LLP

By: _____



CHARLES D. MAY
ANDREA BREUER
Attorneys for Defendant,
DOLLAR TREE STORES, INC.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service, I was at least 18 years of age and **not a party to this legal action.**
2. My business address is 15250 Ventura Boulevard, Ninth Floor, Sherman Oaks, CA 91403.
3. I served copies of the following documents (specify the exact title of each document served):

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §1332 & §1441(B) (DIVERSITY)

4. I served the documents listed above in item 3 on the following persons at the addresses listed:

David M. Simonini, Esq.
 110 C Street
 Sausalito, CA 94910
 Tel: (415) 457-5285
davesimonini@gmail.com

Attorney for Plaintiff,
 KRISTEN HONDA

5. a. **X** **BY ELECTRONIC TRANSMISSION.** By e-mailing the document(s) to the person(s) at the e-mail address(es) listed in item 4 pursuant to prior written consent of the party(ies) served. Fed.R.Civ.P. 5(b)(2)(E) and (F). I caused the documents to be sent on the date shown below to the e-mail addresses of the persons listed in item 4. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

6. I served the documents by the means described in item 5 on *(date)*: *See below*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/31/2022
 DATE

Belinda A. Porras
 (TYPE OR PRINT NAME)

Belinda A. Porras
 (SIGNATURE OF DECLARANT)

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